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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 594

PETER ROSSI AND EDWARD EHRETT,
PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 4, 1933

CERTIORARI GRANTED FEBRUARY 6, 1933

(37,291)

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1 Pleas in the District Court of the United States of America, within and for the Northern Division of the Southern District of Illinois, held at the City of Peoria, in said Division and District, before the Honorable Louis FitzHenry, Judge of said Court, on Monday, the 20th day of October, in the year of our Lord One Thousand Nine Hundred and Thirty, and of the Independence of the United States of America, the One hundred and Fifty-fifth year.

Present:

Louis FitzHenry, District Judge.

Walter M. Provine, U. S. Attorney.

C. W. Cushing, U. S. Marshal.

S. T. Burnett, Clerk.

Attest:

S. T. Burnett, Clerk.

2 IN THE DISTRICT COURT OF THE UNITED STATES

For the Southern District of Illinois,

Northern Division.

The United States, *vs.* Peter Rossi, alias Peter Russo and Edward Ehrett.	No. 1272. Indictment. Operating a still without payment of tax, etc.

Be it remembered that heretofore to wit: on the 5th day of November, in the year of our Lord one thousand nine hundred and thirty, that being one of the days of the October term, A. D. 1930, of the district court of the United States, for the Northern Division of the Southern District of Illinois, the grand jurors of the United States of America, chosen, selected, and sworn, within and for the Northern Division of the Southern District of Illinois, came into open court and presented an indictment against Peter Rossi, alias Peter Russo and Edward Ehrett, for "Operating a still without payment of tax, etc.," which said indictment was signed by the district attorney and indorsed by the Foreman of said Grand Jury, as a true bill, and was and is in the words and figures, following, to wit:

3 IN THE DISTRICT COURT OF THE UNITED STATES

For the Southern District of Illinois,

Northern Division.

Docket No. .....

Pre. Pro.
Walter M. Provine
U. S. Attorney

UNITED STATES OF AMERICA.

At the October Term thereof, A. D. 1930.

Southern District of Illinois, } ss.
Northern Division. }

The Grand Jurors of the United States of America, impaneled, sworn and charged in the District Court of the

United States of America, within and for said Northern Division of the Southern District aforesaid, at the term aforesaid, of the court aforesaid, in the year of our Lord Nineteen Hundred Thirty, and inquiring within and for said Northern Division of said Southern District, upon their oath present, that Peter Rossi, alias Peter Russo and Edward Ehrett, on, to wit, the Tenth day of September, in the year of our Lord Nineteen Hundred Twenty-nine, at, to wit, the City of Pekin, in the County of Tazewell, in the State of Illinois, in the said Northern Division of the Southern District aforesaid, within the Eighth Internal Revenue Collection District of Illinois, within the Thirteenth Prohibition District of the United States of America, and within the jurisdiction of this court, did then and there wilfully, knowingly, fraudulently, unlawfully and feloniously engage in and carry on the business of a distiller, within the meaning of the Internal Revenue Laws of the United States of America, that is to say, the business of then and there producing distilled spirits, to wit, One hundred ten gallons of uncolored spirituous liquor, commonly known and described as moonshine whiskey and hootch, and Ten gallons of colored spirituous liquor, commonly known and described as moonshine whiskey and hootch, with intent then and there in them, the said Peter Rossi, alias Peter Russo and Edward Ehrett, then and there to defraud the United States of the special tax, to wit, the tax of One Dollar and Ten Cents ($1.10), upon each proof gallon of the said distilled spirits, so then and there distilled and to be distilled by them, the said Peter Rossi, alias Peter Russo and Edward Ehrett, as aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

4 Second Count.

And the Grand Jurors aforesaid, inquiring as aforesaid, upon their oath aforesaid, do further present that the said Peter Rossi, alias Peter Russo, and Edward Ehrett, hereinafter called the Defendants, on, to wit, the Tenth day of September, in the year of our Lord Nineteen Hundred Twenty-Nine, at, to wit, the City of Pekin, in the County of Tazewell, in the State of Illinois, in the said Northern Division of the Southern District aforesaid, within the Eighth Internal Rev-

enue Collection District of Illinois, within the Thirteenth Prohibition District of the United States of America, and within the jurisdiction of this court, did then and there wilfully, knowingly, unlawfully, fraudulently and feloniously engage in and carry on the business of a distiller, that is to say, the said Defendants did then and there engage in and carry on the business of separating alcoholic spirits, to wit, one hundred twenty gallons of alcoholic spirits, commonly known and described as moonshine whiskey, and hootch, from a fermented substance, to wit, fermented corn sugar mash, by the process of evaporizing the said fermented corn sugar mash, in a certain still, to wit, one certain fifteen gallon still, having connected therewith a worm, one-half inch in diameter and ten feet in length, the said worm being then and there contained in a fifty-gallon barrel, and the said still then and there having connected thereto, and used in connection therewith, certain other machinery and apparatus, to wit, one, one-hundred-gallon condenser, one four-horse-power steam boiler with oil burner, and one, one-quarter-horse-power electric motor, they, the said Defendants, then and there intending to defraud the United States of America of the special tax, to wit, the tax of One Dollar and Ten Cents ($1.10), imposed by the provisions of the Internal Revenue Laws of the United States of America, upon each proof gallon of said alcoholic spirits so distilled and to be distilled by them as aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

5 Third Count.

And the Grand Jurors aforesaid, inquiring as aforesaid, upon their oath aforesaid, do further present that the said Peter Rossi, alias Peter Russo and Edward Ehrett, hereinafter called the Defendants, on, to wit, the Tenth day of September, in the year of our Lord Nineteen Hundred Twenty-nine, at, to wit, the City of Pekin, in the County of Tazewell, in the State of Illinois, in the said Northern Division of the Southern District aforesaid, wtihin the Eighth Internal Revenue Collection District of Illinois, within the Thirteenth Prohibition District of the United States of America, and within the jurisdiction of this court, did then and there wilfully, knowingly, fraudulently, unlawfully and feloniously

carry on the business of a distiller, without having given bond as required by law, that is to say, the said Defendants did then and there produce a large quantity of distilled spirits, to wit, one hundred twenty gallons, more or less, of alcoholic spirits, commonly known and described as moonshine whiskey and hootch, (the exact quantity thereof being to the Grand Jurors unknown), and did then and there brew and make a large quantity of corn sugar mash, fit for distillation, and for the production of said alcoholic spirits, (the quantity of said corn sugar mash being to the Grand Jurors unknown), and did then and there, by a process of evaporizing the same in a certain still, to wit, one certain fifteen-gallon still, having connected therewith a worm, one-half in in diameter and ten feet in length, the said worm being then and there contained in a fifty-gallon barrel, and the said still then and there having connected thereto, and used in connection therewith, certain other machinery and apparatus, to wit, one 100-gallon condenser, one 4-horse power steam boiler with oil burner, and one ¼-horse power electric motor, separate alcoholic spirits, to wit, the said one hundred twenty gallons, more or less, of alcoholic spirits, from a fermented substance, to wit, from the said fermented corn sugar mash, without having theretofore executed a bond with at least two sureties, approved by the Prohibition Administrator of the Thirteenth Prohibition District of the United States of America, for a penal sum of not less than the amount of tax on the spirits that could be distilled in the said distillery
6 during a period of fifteen days, but not exceeding the sum of One Hundred Thousand Dollars ($100,000.00), in a form prescribed by the Commissioner of Prohibition of the United States of America, and conditioned that they, the said Defendants, would faithfully comply with all the provisions of law relating to the duties and business of distilleries, and would pay all penalties incurred, or fines imposed on them, the said Defendants, for a vioation of any of the said provisions of law, and that they, the said Defendants, would not suffer the lot or tract of land on which the said distillery should stand, or any part thereof, or any of the distilling apparatus, to be encumbered by mortgage, judgment or other lien, during the time in which they, the said Defendants, should carry on said business of a distiller as aforesaid; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Fourth Count.

And the Grand Jurors aforesaid inquiring as aforesaid, upon their oath aforesaid, do further present that the said Peter Rossi, alias Peter Russo and Edward Ehrett, hereinafter called the Defendants, on, to wit, the Tenth day of September, in the year of our Lord Nineteen Hundred Twenty-nine, at, to wit, the City of Pekin, in the County of Tazewell, in the State of Illinois, in the said Northern Division of the Southern District aforesaid, within the Eighth Internal Revenue Collection District of Illinois, within the Thirteenth Prohibition District of the United States of America, and within the jurisdiction of this court, did then and there wilfully, knowingly, unlawfully, fraudulently and feloniously have in their possession and under their custody and control, a certain still, set up, to wit, one certain fifteen-gallon still and coil, having attached thereto, and used in connection therewith, one certain 100-gallon condenser, one certain 4-horse power steam boiler, with oil burner, driven by a
7 certain ¼-horse power electric motor, and one certain ½-horse power electric motor and pump, together with all other necessary attachments and adjustments thereto pertaining, necessary and essential for the operation thereof, which said still had not then and there and theretofore been registered with the Prohibition Administrator of the United States of America, in and for the said Thirteenth Prohibition District of the United States of America, by subscribing and filing with the said Prohibition Administrator, immeditaely upon said still being set up, or at any time thereafter, duplicate statements in writing, setting forth the particular place where said still was set up, the kind of still so set up, the cubic content thereof, the owner or owners thereof, his or their place or places of residence, and the purpose for which the said still had been or was intended to be used, which said still was then and there capable of, and was intended and designed, on the parts of the said Defendants, for the unlawful production, of distilled spirits, to wit, alcoholic spirits, commonly known and described as moonshine whiskey and hootch, to be used for beverage and commercial purposes; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Fifth Count.

And the Grand Jurors aforesaid, inquiring as aforesaid, upon their oath aforesaid, do further present that the said Peter Rossi, alias Peter Russo and Edward Ehrett, hereinafter called the Defendants on, to wit, the Tenth day of September, in the year of our Lord Nineteen Hundred Twenty-nine, at, to wit, the City of Pekin. in the County of Tazewell, in the State of Illinois, in the said Northern Division of the Southern District aforesaid, within the Eighth Internal Revenue Collection District of Illinois, within the Thirteenth Prohibition District of the United States of America, and within the jurisdiction of this court, being then and there engaged in carrying on the business of a distiller, and having theretofore distilled a large quantity of distilled spirits, to wit, one hundred twenty gallons of alcoholic spirits, commonly known and described as moonshine whiskey and hootch, then and there intended by the said Defendants to be used for beverage and commercial purposes, they, the
8 said Defendants, did then and there wilfully, knowingly, unlawfully, fraudulently and feloniously defraud, and attempt to defraud, the United States of America of the special tax imposed thereon, by the Internal Revenue Laws of the United States of America, to wit, the tax of One Dollar and Ten Cents ($1.10), per proof gallon of the said one hundred twenty gallons of alcohol spirits, so then and there distilled as aforesaid, by the said Peter Rossi, alias Peter Russo and Edward Ehrett; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

WALTER M. PROVINE,
United States Attorney.

Endorsed: "A true bill, H. W. Tremann, Foreman." Filed Nov 5 1930 S. T. Burnett, Clerk.

9 And afterwards, to wit: on the 17th day of November, A. D. 1930, the following further proceedings were had in said court in said case and were entered of record, to wit:

10 * * (Caption) * *

Monday, November 17, 1930.

Court met pursuant to adjournment.

Present: The Honorable Louis FitzHenry, Judge.

And now on this 17th day of November, A. D. 1930, comes the United States, the plaintiff in this case by Walter M. Provine, Esq., United States attorney for the Southern District of Illinois and come also the defendants Peter Rossi, alias Peter Russo and Edward Ehrett in their own proper persons and by J. E. Dougherty, Esq., their attorney. And the said defendants being arraigned on the indictment herein for plea thereto each for himself says he is not guilty as therein charged. And the said defendants by their attorney enter a motion to suppress the evidence herein.

And now issue being joined, this cause is submitted to the court for trial without the intervention of a jury, the said defendants waive trial by jury, and after hearing a part of the evidence in this cause, the hour for adjournment having arrived, the further trial hereof is postponed until 9 o'clock A. M. tomorrow.

11 And afterwards. to wit: on the 18th day of November, A. D. 1930, the following further proceedings were had in said court in said case and were entered of record, to wit:

12 * * (Caption) * *

Tuesday, November 18, 1930.

Court met pursuant to adjournment.

Present: The Honorable Louis FitzHenry, Judge.

And now on this 18th day of November, A. D. 1930, come again the parties to this cause by their respective attorneys and the further trial hereof is resumed, and after hearing the remainder of the evidence, the arguments of the respective attorneys, the court finds the defendants and each of them guilty. Thereupon the said defendants enter a motion for a new trial, which motion is then and there denied. To

which ruling of the court the defendants by their attorney duly excepted. Then the said defendants by their attorney enter a motion in arrest of judgment. It is ordered by the court that pending the disposition of the motion in arrest of judgment the said defendants Peter Rossi, alias Peter Russo and Edward Ehrett be enlarged on a bond of Five Thousand Dollars each.

13 And afterwards, to wit: on the 18th day of December, A. D. 1930, the following further proceedings were had in said court in said case and were entered of record to wit: Ente 18

14 * * (Caption) * *

Thursday, December 18, 1930.

Court met pursuant to adjournment.

Present: the Honorable Louis FitzHenry, Judge.

And now on this 18th day of December, A. D. 1930, comes again the United States the plaintiff in this case by Walter M. Provine, Esq., United States Attorney for the Southern District of Illinois and come also the defendants Peter Rossi, alias Peter Russo and Edward Ehrett in their own proper persons and by John E. Dougherty, Esq., their attorney and the court having heard and duly considered the motion of said defendants for a new trial and being thus fully advised in the premises, overruled the same, to which ruling of the court the defendants by their attorney then and there duly excepted. And thereupon the said defendants entered a motion in arrest of judgment and the court having heard and duly considered the same, it is ordered that said motion be, and is hereby overruled, to which ruling of the court the defendants then and there by their attorneys duly excepted. Judgment on the verdict.

And the said defendants now being arraigned at the bar of the court for sentence and each having nothing to say why sentence should not be pronounced against him. It is therefore considered and adjudged by the court that the said defendants Peter Rossi, alias Peter Russo and Edward Ehrett

15 for the offenses by each committed in manner and form as charged in counts one, two and three of the said indictment and as found by the jury in this case, each be

confined in the United States Penitentiary at Leavenworth, Kansas, for a period of eighteen months on each of said counts, the sentences of imprisonment herein pronounced on counts one and two of said indictment to run concurrently with sentence of imprisonment pronounced on said count three of said indictment—and for the offense by each committed in manner and form as charged in count four of the said indictment and as found by the jury in this case be confined in the said United States Penitentiary, at Leavenworth, Kansas, for a period of eighteen months, the sentence of imprisonment herein pronounced to run consecutively to the sentence of imprisonment pronounced on counts one, two and three of said indictment—and also to each pay a fine to the United States in the sum of five hundred dollars on each of counts one, three and four of the said indictment, together with the costs of this prosecution, amounting to the sum of dollars, that execution issue therefor and that said defendants stand committed in said United States Penitentiary, at Leavenworth, Kansas, until the amounts of their respective fines and costs shall have been fully paid or until otherwise discharged by due process of law.

And it is further ordered by the court that the clerk issue a writ of commitment commanding the Marshal to forthwith take the said Peter Rossi, alias Peter Russo and Edward Ehrett and to deliver them together with a true copy of said writ of commitment to the Warden of the United States Penitentiary at Leavenworth, Kansas.

15a It is further ordered by the court that the verdict herein as to count five of the said indictment be, and is hereby set aside and the said defendants Peter Rossi, alias Peter Russo and Edward Ehrett, found not guilty of the charge therein.

16 * * (Caption) * *

BILL OF EXCEPTIONS.

Appearances:

For the United States of America: Marks Alexander, Esq., Asst. U. S. Atty., Robt. A. Stephens, Jr., Asst. U. S. Atty.

For the Defendants: John E. Dougherty, Esq., Peoria, Ill.

17 Be It Remembered that heretofore, on to-wit, Nov. 17, A. D. 1930, there was filed by the defendants herein with the Clerk of this Court, their certain Motion to Suppress Evidence, which said Motion is in the words and figures as follows, to-wit:

* * (Caption) * *

MOTION TO SUPPRESS EVIDENCE.

"Now comes the above named Peter Rossi and Edward Ehrett, defendants herein, and being each sworn on his oath, deposes and says that on the 10th day of September, A. D. 1928, they were each guests, and as such guests temporarily domiciled at the private dwelling of one Nellie Faux, in the City of Pekin, Illinois.

"Your affiants further show to the Court that on said 10th day of September, A. D. 1929, certain Federal Prohibition Agents, acting as Federal Prohibition Agents, without any warrant or other writ of authority to either search said premises or to arrest any person in or upon said premises, did go upon said premises, and enter into said private dwelling on said premises, and did then and there search said pri-
18 vate dwelling and seize and confiscate the following property, to-wit:

Some alleged colored spirituous liquor
Some alleged corn sugar mash
One alleged still and worm
A barrel
An alleged condenser and boiler with oil burner
One electric motor and other property,

and did then and there arrest your affiants.

"Your affiants further show to the court that said search, seizure and arrest was and is illegal and unlawful, and in violation of the Constitution and Laws of the United States and your affiants' rights thereunder.

"Your affiants further respectfully show to the court that the United States Attorney for this District purposes to use as evidence on the trial of this cause all of the articles and things so seized as aforesaid, and to permit said United States Attorney to so use said articles and things as evidence against your affiants on the trial of this cause is and would

be in violation of your affiants' rights under the Constitution and Laws of the United States.

"Your affiants respectfully petition this Honorable Court to order and direct that all of said articles and things so seized as aforesaid shall be suppressed and not used as evidence on the trial of this cause, and that the United States Attorney of this District shall, by order and direction of this Court, be ordered and directed not to use any of said articles or things so seized as aforesaid, as evidence on the
19 trial of this cause, or any of the evidence obtained by or through said search or seizure on the trial of this cause.

(Signed:) PETER ROSSI
(Signed:) EDWARD EHRETT"

UNITED STATES OF AMERICA

State of Illinois, }
Peoria County. } ss.

PETER ROSSI, being first duly sworn on his oath, deposes and says that he is the same person whose name is subscribed to the foregoing affidavit and petition; that he knows the contents thereof and that the same is true, except as to the matters of law set forth therein, and those matters he believes are true.

(Signed:) PETER ROSSI.

Subscribed and sworn to before me this 17th day of Nov., A. D. 1930.

S. T. BURNETT
(Seal) *Clerk, U. S. Dist. Court.*

UNITED STATES OF AMERICA

State of Illinois, }
Peoria County, } ss.

EDWARD EHRETT, being first duly sworn on his oath, deposes and says that he is the same person whose name is subscribed to the foregoing affidavit and petition; that he knows the contents thereof and that the same is true, except

as to the matters of law set forth therein, and those mat-
20 ters he believes are true.

(Signed.) EDWARD EHRETT.

Subscribed and sworn to before me this 17th day of Nov., A. D. 1930.

S. T. BURNETT
(Seal) *Clerk, U. S. Dist. Court.*

The above entitled cause of the United States of America -vs.- Peter J. Rossi and Edward Ehrett. No. 1272, having previously been set for trial on said 17th day of November, A. D. 1930, it was thereupon ordered by the Court that said Motion to Suppress Evidence would be heard and decided upon the evidence offered in the trial of said cause.

And Be It Further Remembered that thereafter, on to-wit, November 17, 1930, there was filed with the Clerk of this Court by the defendants Rossi and Ehrett herein, their Waiver of Right of Trial by Jury, which said Waiver is in the words and figures as follows, to-wit:

21 * * (Caption) * *

WAIVER OF RIGHT OF TRIAL BY JURY.

Come now the Defendants, Peter Rossi and Edward Ehrett, in their own proper person, and hereby in writing waive the right of trial by jury and agree to the trial of the issues in this cause by the Court, without the intervention of a jury.

(Signed:) PETER ROSSI
(Signed:) EDWARD EHRETT

And Be It Further Remembered that thereafter, on to-wit, November 17, A. D. 1930, the same being one of the days of the October A. D. 1930 Term of said Court, the above entitled cause came on for hearing before Honorable Louis FitzHenry, Judge, without a jury, whereupon the following proceedings were had, to-wit:

22 EVIDENCE ON THE PART OF THE GOVERNMENT.

Testimony of A. E. WHEELER:

Examination conducted by Robert A. Stephens, Jr.

My name is A. E. Wheeler. (Stipulation that the witness is and was a Prohibition Agent during the month of September, 1929.) I am acquainted with the premises located at 1516 South Fifth Street, Pekin, Illinois. On September 8th, 1929, at about six o'clock in the morning, I went to the premises there, or by the premises, I didn't go on to the lot—and you could smell fermenting mash from there, and you could also hear the buzz or the hum of an electric pump in the basement.

On September 10, 1929, at about nine or ten o'clock, several agents went to those premises. Mr. Moore first. This is a one-story frame building that faces the west. Mr. Moore and I walked around the south side of the building anod Mr. Johnson and some one else went around the north side of the building, and we met at the back. There had been a hole dug down by the side of the brick wall to the basement, and a hole knocked through that wall, and a double door put in there. We met at that back door, and Agent Johnson said, "Hello," or something, in a rather louder voice than usual, and we could hear two men's voices on the inside. After a lapse of a few minutes, Mr. Ehrett came to the door. This door came out of the basement. Mr. Johnson asked him if he had a still down there, and he said "No." Johnson
23 asked him if he cared if we went down and saw, and he said "No," and he started to walk out, and Johnson said, "No, you go down with us," and Johnson and Ehrett walked into the basement, followed by the other agents or some of the other agents. I went into the basement with them.

We found about a ten horse-power boiler and a three hundred gallon still with a column. First, there had originally been a cellar way leading from the kitchen into this basement. The steps of this cellar way to the ceiling had been taken out.

(Objection, Motion to Strike, and Motion allowed as to the latter part of the answer.)

The Witness: At the back of the building was a small

place probably three and one-half or four feet by ten feet leading from the basement into the attic; on the first floor level there was a door from a room leading into this four by ten foot compartment or apartment. There was a column about nine feet long running from this still up through this four by ten compartment, and this column was in such a position that the door from the kitchen could not be opened; it was nearly against that door. In the attic was a condenser. Then there was a quantity of alcohol found in the basement. There was no mash. This was a re-running or re-cleaning still.

There was a quantity of alcohol found in the basement and a quantity of five-gallon cans. This boiler was fed by a fuel oil burner and there was a motor that supplied pressure for that. There was also a motor pump in this basement. Then over in one corner of the basement was a little, perhaps
24 a fifteen-gallon still with a coil in a barrel and two barrels of mash over there; and near that was a fifteen-gallon keg of some kind of alcoholic liquor.

We had some conversation with Mr. Ehrett but not much. He told us that the outfit belonged to him. Then some of the agents who were at the front of the building said that there was another man in there, and Agent Moore and myself climbed up this column up into the attic, and found Mr. Rossi back under the eaves behind some wood that projected, lying down in behind that. We brought him down. He had on a blue work shirt and had some grease and oil on his hands. I had no conversation with Mr. Rossi.

I tasted the alcohol that we found there by using a hydrometer. It tested over 180 proof, which would be 90 per cent of alcohol by volume. I also smelled it. In my opinion it was alcohol. I was a guager and storekeeper in the Internal Revenue Department before I went into the Prohibition Service.

There were twenty-two five-gallon cans and this fifteen-gallon keg, making about one hundred twenty-five gallons which would make about one hundred ninety-eight proof gallons besides the fifteen gallon keg.

I did not test this fifteen-gallon keg except to smell it. It was alcohol.

This one electric motor furnished pressure on a tank from which oil went to the burners under the boiler; the steam from the boiler went through a coil in the bottom of the still and heated the alcohol that they were redistilling, and the al-

coholic vapor arose through this column and was cooked and condensed in the condenser in the attic, and came back in the down spout.

25 There was no worm connected with the fifteen-gallon still. The still just sat there on the burner; it wasn't heated by steam. That still was not in operation. There was a worm or coil that went into a barrel for a condenser—a fifty gallon barrel. That worm was for this fifteen gallon still. It was not in operation but it was set up ready for operation.

Mr. Ehrett and several other agents and myself were standing there and Mr. Ehrett said, "couldn't we fix this," and I said, "Yes, you can fix it with the Judge."

There was a Ford car sitting in the yard at the side of the house. Ehrett stated that the car belonged to his wife. He asked about keeping the car to make a living, and we found his tools in the car. We seized the car and told him he could have his tools. This place was located in Pekin, Tazewell County, Illinois.

The mash that we found was a sugar—a sacharine mash, with a little grain in it.

Cross-Examination by Mr. Dougherty.

I was a witness on the preliminary hearing of this case, conducted before William H. Moore, United States Commissioner here in Peoria. I don't know the date of that hearing, and can not say whether it was one week or one, two, three, four, five or six months after we made this arrest. I know it wasn't six months. I was sworn to tell the truth on that hearing.

Mrs. Nellie Faux lived on the first floor of these premises. It was fitted up as an ordinary dwelling house or home

26 that a person would live in, and from the front it had the appearance of a dwelling house. After we entered it, we found a kitchen and a dining room and a living room and bedrooms, equipped with furniture and other equipment used in keeping house.

After some of the agents left, and after we had been in the basement, we went to the front door, and Mrs. Faux invited us in. We had been in the basement and attic before this. This invitation was after Ehrett and Rossi had been arrested.

I did not testify before the Commissioner that Ehrett said

that he owned the still. I don't know whether it was asked of me. I was not there to testify all that I knew about it.

I tested one can by the hydrometer, and I tested the others as they were dumped by smell. I don't know what proof the other cans were. I only know about the other cans from my judgment.

I did not see Ehrett or Rossi operate any still there. The still was fired up. There was a little alcohol coming out of the goose neck. I don't know how much. We did not save any that came out of the still. I did not see Rossi attending any still. Some of the alcohol which came from the column was saved. It is in the store rooms. I will produce this exhibit.

Redirect Examination by Mr. Stephens.

I was there when the try box was dismantled. As I remember, there was alcohol coming out of the try box, and there was some in the column and some in the condenser.

27 GLENWOOD JOHNSON.

GLENWOOD JOHNSON, a witness called on behalf of the Government, testified as follows:

Direct Examination by Mr. Stephens.

My name is Glenwood Johnson. I am now and was a Prohibition Agent in September, 1929. I visited the premises at 1516 South Fifth Street, Pekin, Illinois, on September 10, 1929, with Agents, Rehm, Thorpe, Wheeler, Moore and a couple of others. Quite a few of us. We had information there was a still in the property, and on that morning, about nine-thirty, we went down there to make an investigation.

As we drove up in front of the place and stopped I could smell the odor of alcohol—the cooking odor. We stopped the car, and with Agent Rehm, I went around to the back on the north side of the house. As we walked by the house, there was an open window there and I looked in and I could see a still and hear the pump of the oil burner in operation. With Agent Rehm I walked around to the back and we could hear a conversation in the basement. I walked around to the

back to where there was a grade entrance or a door that was closed. I called, "Hello," or some conversation, and in a short time a man appeared at the door, and came out, who was later known as Mr. Ehrett. I asked him if he had a still down there and he said, "No," and came on out; and I said, "Do you care if I go down and look?" and he started to leave. I said, "No, you are not going to leave; you
28 are going back with us." And by that time Wheeler and Moore came around from the south side of the house and with Rehm we all went down and found the still in operation.

There was an upright steam boiler of, I should judge, eight or ten horse power, a steam boiler with an oil burner under it; there was approximately a three hundred gallon copper kettle or still; there was a nine foot column extending from where an entrance from the first floor to the basement had been; there was a frame sitting there with a column extended up into the attic, with a hundred gallon condenser up there. There was an electric pump attached in the basement. There was also about a fifteen gallon copper kettle still that was not in use. There was perhaps about ten feet of coil in a barrel used as a condenser which wasn't in operation, and there was two barrels of corn sugar mash that may have had some grain in it for flavoring. There were twenty-two five-gallon cans of uncolored spirits and there was one fifteen-gallon wood keg containing some spirits.

I was present when there was some conversation carried on. Mr. Rossi stated that he had just arrived and that he had been called down there that morning for the purpose of fixing a pump. He said he didn't know there was a still in the premises, but that he had been called down there to fix a pump and had just arrived when we arrived there. I knew Mr. Rossi and he knew me. He stated that he didn't know the still was there and that it wasn't his still.

I tasted and smelled the contents of the twenty-two five-gallon cans. In my opinion it was uncolored spirits, containing more than one-half of one per cent of alcohol by
29 volume. It would have to be diluted to be fit for use for beverage purposes. I tasted and smelled the fifteen-gallon keg. In my opinion, it was colored spirits, containing more than one-half of one per cent of alcohol by volume, and was fit for use for beverage purposes. In my opinion, it was distilled spirits.

I overheard a part of a conversation between Mr. Ehrett

and Agents Wheeler and Moore. It was in regard to fixing it up or leaving the still be.

I brought the samples to the office.

Cross-Examination by Mr. Dougherty.

Agent Rehm and I went around the north side of house and Wheeler around the south side. We arrived at the back at the same time.

When I asked Ehrett if he had a still down there, he said he didn't. Rossi was not down in the place where we found the still. I saw him coming down from up stairs. I took him over to a telephone. I was not there all the time.

I was told by some of the other agents that Ehrett asked if we had a search warrant. Ehrett said something to me about being hit on the jaw.

This place had all of the appearances of a dwelling house. Mrs. Faux stated that she lived there. It was equipped with furniture, and the place where we found the still was in the basement of that house; and everything that we found in that place on that day was under the roof of that dwelling house.

We had no search warrant that I served.

I could see that the still was in operation; alcohol was coming out of it. I said, to my recollection, that it was. I saw no one operate the still. When I tasted the contents of two or three cans I just touched my tongue to it or put my finger in it and put my finger in my mouth and smelled it.

Redirect Examination by Mr. Stephens.

We found a Ford parked alongside of the house. Ehrett stated it belonged to his wife, and he borrowed it from her. He gave me the keys. I told him I had to have the car to bring in. He asked about the box of tools that was in it, and I opened the box and saw that they were tools and he asked if he could have them, and I said "Yes," and gave him the box of tools that was in the back seat of the car. They were regular ordinary working tools.

H. A. MOORE

H. A. MOORE, a witness on behalf of the United States, testified as follows:

Examination by Mr. Stephens.

My name is H. A. Moore. I am now and was a prohibition agent in September, 1929. On September 10, 1929, with other agents, I visited the premises located at 1516 South Fifth Street, at Pekin, Illinois. As we approached we detected the odor of alcohol. Agent Wheeler and I went on the South side of the house in the drive; Agents Thorpe and Garden remained in the front of the premises, and Agents Rehm, Johnson went on the north side of the house. We met Agents Rehm and Johnson—that is, Agent Wheeler and I met
31 Agents Rehm and Johnson at the rear of the premises at a cellar way that went into the basement. Agent Johnson called down, and the defendant Ehrett came from the basement. Agent Johnson said, "Have you a still down there," and he said, "No." Johnson said, "Do you care if I look?" and he said, "No." With that, defendant Ehrett started to walk away from the basement entrance, and Johnson said, "No, you go along with us," and we went in the basement and found two stills, a small one and a large one, the large one in operation. Ehrett turned off the oil burner which was under the steam boiler in operation, and he said it was his plant and wanted to know if he could not fix it up; and we told him there was no chance of doing that. We asked him about the other man. We said there were two men talking before we went down in the basement; that we heard two of them talking. He said that there wasn't any other man, that he was talking to the lady upstairs about a radio. But in crawling up the column of what was the rear basement stairway into the roof space or attic, we found the defendant Rossi. He was crowded in the ceiling of the porch, back in as close as he could get to where the rafters and the roof came down together. There was a shingle sticking up there a little bit, and he was hiding behind the shingle. To get to that place we climbed the pipes that went up to the attic. I told Rossi to go on down stairs. There was some little conversation as he was coming down out of

the attic in which he said this was the second still he had been caught at, and he would have to fix it up. We asked Rossi what
32 he was doing out there at this still, and if he hadn't got enough for one still, and he said he was just sent out and that he came out to fix one of the pumps that wasn't acting right, and got there just before we got there—that he just came.

I had a convesation with Ehrett before this. Ehrett was arguing with Johnson over a search warrant that he had. I told Ehrett that I thought he had shown enough disrespect for the law and for him to sit down in the chair that was over near the south wall. He said he didn't have to do it. I kind of pushed him down in the chair.

Outside the house, we talked to Ehrett about the car and about the tools. He said they were his tools, and he had them when he was in the garage business, and not to take them, they were the only legal means he had of making a living. We put the tools on the rear porch and the bill fold containing mostly bills of sale on cars, were given to him.

Cross-Examination by Mr. Dougherty.

Ehrett told me that he had been in the garage business. I don't remember the radio business. I think he asked if we had a search warrant and I think he asked Johnson to read the warrant. Johnson said he wasn't serving a warrant. I pushed Ehrett in the nose. When I told Rossi to go down stairs, the agents were scattered all over the basement, which is about twenty-four feet square.

Q. Well, you said Pete said, "Let's fix this up," and so did Agents Johnson and Wheeler.

A. I could not hear, but I took it as if he did. He didn't offer us anything, Rossi didn't do anything but stand
33 there. Rossi said this would be the second still he was caught at and he could not stand to have two against him and wanted to fix it up. Agent Wheeler might have told Ehrett to shut the burner off. I don't recall any agent tell him that. Ehrett went back into the basement at the direction of the agents. Ehrett said it wasn't his still.

A. E. WHEELER recalled as a witness, testified as follows:

Mr. Alexander: Mr. Dougherty requested this exhibit be produced. I will turn it over to him and tender Mr. Wheeler for further cross-examination.

Cross-Examination by Mr. Dougherty.

I remember that one of the agents told Ehrett to turn the burner off.

H. A. MOORE recalled as a witness, testified as follows:

Direct Examination by Mr. Stephens.

Defendant Ehrett said he lived on South Fourth Street, Pekin, Illinois—1115, I think; and defendant Rossi said he couldn't think where he lived; he thought it was on Prince Street, I think.

JOHN EDENS, JR.

JOHN EDENS, JR. testified as follows:

Examination by Mr. Stephens.

My name is John Edens, Jr. I am now and was for five years on September 1st, a mail carrier in the City of Pekin.
During September, 1929, I delivered letters to Peter
34 Rossi at 731 Prince Street. I never was directed that
I can remember, to deliver letters addressed to Peter Rossi to any other place. I never had any letters addressed to him and delivered to him returned. I know Pete Rossi. I have delivered all of his mail to that address.

Cross-Examination by Mr. Dougherty.

I can not say that I ever knew Peter Rossi prior to or during the month of September, 1929. I don't know whether

the letters were addressed to the Mr. Peter Rossi who is the defendant in this case.

(Motion to strike the testimony of the witness. Motion denied.)

Mr. Alexander: I would like to have the Court call as the Court's witness Mrs. Nellie Faux. The Government does not want to vouch for Mrs. Faux.

The Court: What is the ground?

Mr. Alexander: She is the woman who is alleged to have lived in this house, and we think her testimony would have a bearing upon it.

Mr. Dougherty: I suggest, if the Court please, that they make a preliminary showing before they do any such a thing as that.

Mr. Alexander: Well, I vouch that I can not stand back of all of Mrs. Faux' testimony.

Mr. Dougherty: That is not a proper showing, if the Court please. The Government can not make anyone the Court's witness and bring a witness on here, and say, "We want you to believe so much as is beneficial to our side of the case. This woman here is a perjurer and one who is liable to commit perjury, but if she will testify to suit us, she is fine; but if not we will disavow her." There is a legal way to make that showing, and I insist that the United States Attorney make that showing which is necessary under the law, before this Court will call anybody as the Government's witness. There is no showing that she is hostile to the Government, but just "We would rather that the Court would call her." Now, that is not fair and it is not proper.

Mr. Alexander: I will state that I have talked with Mrs. Faux, and I don't want to vouch for all of her testimony. I think she is a witness that the Court should hear and give such weight to her testimony as the Court feels it is entitled to, but as representing the Government I would not want to vouch for its correctness in all of its details,—after talking to her.

Mr. Dougherty: If the Court please, if I understand the duty of the United States Attorney or one of his assistants, it is merely to develop such facts as he can on the trial of a case.

Mr. Alexander: There is a very recent case on this in this circuit.

Mr. Dougherty: If you make a showing.

Mr. Alexander: Well, I think we have made the showing; if we have not, I think we will proceed to say that we can not make it. I think we have made all the showing that is necessary.

The Court: Bring her in.

36 Mr. Dougherty: I want the record to show a strenuous objection.

The Court: Defendants object to the witness being called as the Court's witness. for the reason that no proper foundation has been laid and no proper showing made in the statement of counsel for the Government that the Government does not wish to vouch for the witness' testimony and reserves the right to impeach her if necessary and proper in the judgment of counsel, and asks that privilege; and for the purpose of not waiving the privilege or making that showing he requests the Court to call the witness as the Court's witness without prejudice to the prosecution. Does that cover it? What else should be shown?

Mr. Dougherty: I am not going to make any suggestion; at the last term of court you let them re-open a case on me.

The Court: Call the witness.

.(To which ruling of the Court the defendants, by their counsel, then and there duly excepted.)

MRS. ADOLPH FAUX, a witness called by the Court, having been sworn, was examined by the Court, and testified as follows,

My name is Mrs. Adolph Faux. On or about the 10th day of September. 1929, I lived on South Fifth Street. I don't recall the number; I think it is 1015. I recall the occasion of the officers making a raid in the basement about that time. I was at home at that time, and had lived there about nine months. I rented the property from Mr. Velde, and paid

37 thirty dollars a month rent. My family consists of my husband and one six-year old son. There are five rooms and a bath in that house, all on one floor. I rented the entire house; there was nobody else in it when I rented it. At that time there was a stairway leading down from the upstairs to the basement on the inside. Steps were in there at that time. I don't remember the exact date I rented the basement, but at the time I rented it, the steps were taken out

immediately. There was no understanding to take the steps out at the time I rented the basement.

(The witness here changes her testimony and says she guesses there was an understanding.)

When the basement was rented, the door leading to the kitchen into the stairway was padlocked and nailed up so that I could not use it. I rented the whole basement and the stairway. There was no ceiling in the stairway; above was the attic. There was no ceiling over the attic. I think I rented the basement about a week and a half before the raid to Mr. John Smith, of Pekin. I have seen him once in a while before I rented it to him for One Hundred Dollars a month. We had no understanding. He made one payment. I never saw anyone bringing in copper kettles and pipes and a gasoline stove because I stayed there only once in a while, and during the day I was down at my father's, at 701 Prince Street.

John Smith is kind of stout and short. He has no mustache nor whiskers and does not wear glasses. I should judges he weights about a hundred and eighty and I judge he is about middle age. I don't know what he does. I
38 was kind of shocked when he said he would pay me one hundred dollars a month for the basement. I did not ask him what he wanted to do with it. I wasn't really concerned because I didn't intend to stay there very long; and I was having a little trouble with my husband, and I separated from him, so I didn't pay so much attention like I should have. I was only there when I went to get a clean apron or something like that. Once in a while I would stay there. I would go down to my mother-in-law's once in a while to try to get hold of my husband. We have gone back together again and live on South Second Street.

I think it was two or three weeks after I separated from my husband that I rented the basement. My husband had gone before I rented the basement. He is a coal miner. I didn't hear them hammering around there or knocking upon the pipes or anything of that kind. I had no idea what was in the basement. I reserved the whole house for myself except what I had rented to John Smith.

I know Peter Rossi when I see him. He is the short man in the gray suit with black hair. I know the man sitting next to him but not to speak to him. I never saw Rossi or the other man around there. I don't know what Rossi's business is. I don't know if he is a plumber. I don't know

whether or not he was ever in the garage business. I think Mr. Ehrett has some relation in the garage business. I think there is an Ehrett Garage.

I didn't live there very long after the raid because my basement was a wreck, and there was a lot of odor around there. I went back to my husband a couple of days after the raid. He had nothing to do with renting the basement
39 to John Smith. I rented the house from Mr. Velde in the first place and was attending to that part of the business myself. I never saw anybody taking anything away from this place before the raid and never saw any trucks drive up there to deliver anything or take anything away at all. I was only there one evening and had company that night, and I never heard anything that night and never smelled anything like cooking mash or anything of that kind. The day of the raid the prohibition agents demanded that I let them in my room. They said they would force their way in. I did not invite them in at all and did not say "Come in and sit down." They did come in. I did not have anything there that I was ashamed of or afraid of. They said I had a man in my room, and I said I never. And they said if they didn't find a man in there they would get right out, and I insisted that I never, but they said I better, and I let them in. I don't know what man they were looking for; they just said a man.

Cross-Examination by Mr. Alexander.

I never did meet John Smith. I just seen him on the street the day I rented the basement, about a week and a half before the raid. I was down stairs doing my laundry and he came to the house and I had a talk with him. I had seen him on the street before about two times, but I didn't know exactly who he was. He said he would be interested to rent my basement.

40 After the raid, there was four or five agents came to my door. I don't remember who they were. I did not not say on that occasion that I had rented the basement to a man by the name of John Rust. I said John Smith. I said I thought this man was one of the Russo's. I never thought whether John Smith was this man's true name or not. I took it there was an understanding I was to stay out of the basement. He was to pay the electric and water bills.

On the day of the raid, I went to the house real early to get some clean clothes. I had stayed in the house one night after this man had rented the basement so far as I can recall. I did not invite Peter Rossi there that day. He was not a guest of mine there on that day nor was Edward Ehrett. Between the day I rented the basement and the day the raid occurred, I do not recall authorizing anyone to live in my rooms in that house. I didn't tell anyone to live there.

Q. You didn't authorize Mr. Rossi to live there?

A. I did? I didn't tell anyone that they could live there; to my knowledge there was no one stayed in those rooms.

Cross-Examination by Mr. Dougherty.

I had a radio in the house. I do not remember of Ehrett doing any work on it. I think I said to him the morning of the raid, "I know my radio is not working this morning." The radio was not working right. I suppose my husband got the radio from Ehrett. On the morning of the raid I remember somebody said "What is the matter with the radio?" and I said "The radio is not working," or something of that order.

41 *Further Cross-Examination by Mr. Alexander.*

That voice came from down stairs in the basement. I don't remember of anyone coming to the front door that morning and inquiring about the radio. A person could not get up from the basement into my part of the house. I hadn't seen Ehrett or Rossi that day, and did not recognize the voice that hollered upstairs about the radio and do not know who it was.

Government Rests.

Defendants renew Motion to Suppress Evidence. Motion denied.

EVIDENCE ON BEHALF OF THE DEFENDANTS.

ADOLPH FAUX, being first duly sworn, testified as follows:

My name is Adolph Faux, and I live at Pekin, Illinois. I am married; my wife's name is Nellie. My wife resided, on the 10th day of September, 1929, in the 1500 block South Fifth Street at Number 1516 South Fifth Street. I had not been living with my wife for about two or three weeks prior to the 10th of September. I went back to those premises the next morning after the raid. I am acquainted with the basement and the first floor of those premises, and made repairs upon the premises shortly after the 10th of September by replacing the basement where the concrete was broken.

On the 11th of September, 1929, you would go from the
42 first floor to the basement through the door in the kitchen down the stairway. There was a stairway on the morning of the 11th. There was no evidence of nail holes in the door on the morning of the 11th, as I opened the door and went right down the steps. I could not, from an examination of the door, see whether there were any nail holes in it. The furnace that heats the house sits about the middle of the basement. The furnace was there on the morning of the 11th. The gas meter of the house stood in the northwest corner of the basement. You burn coal in that furnace, but I never lived there in the winter time to burn any.

I have known Ed Ehrett, one of the defendants in this case, since I was a little boy. I bought a radio from him—a battery set—and took it home. And in the latter part of August, 1929, I asked Ehrett to go out and fix it, and he told me he would, that when he got time he would go out there.

Cross-Examination by Mr. Alexander.

I am now living on South Second Street in Pekin, and am employed as a coal miner. I was so employed on September 10th, 1930. I worked in the mine during the whole of September, 1930. I left my wife some ten or twelve days before the raid. I worked in the mine from seven-thirty A. M. until four P. M.

On the day of the raid, I was living at my mother's house at 301 Catherine Street. I heard about the seizure the after-

noon that it occurred when I came from the mine. I went
43 over to my house around eight or nine o'clock the next morning. I found my wife there. I didn't do anything, just looked around, went up in the kitchen and went down in the basement from the inside of the kitchen, down the stairway. The kitchen door opens into the basement. When I opened the door I saw a big hole in there and a lot of cans down there. There wasn't anything extending up into the attic. I didn't see any big column extending up beyond the kitchen door, nor any pipes extending up beyond the kitchen door. There were no holes in the steps, but one step had been broken out.

When I got down in the basement, there was a lot of cans there, and the basement was broken up on the north side of th furnace. I have never seen a liquor still. There was no boiler in there. I did not see anything there that might have been a still. I do not know what was there the day before. The hole in the floor had not been there when I left there. I used to have a four-burner gas stove in the basement. It was there on the morning of the 11th, there was nothing on it.

I have known Ehrett eleven or twelve years and Rossi six or seven years. I never did have the radio going; that is the reason I asked him (Ehrett) to come out and fix it. That was just around the time I left my wife, and I didn't hear anything further from him after that.

Redirect Examination by Mr. Dougherty.

One of the steps going down the stairway, the one about the middle, was broken out. It was just hanging down.

44 A. E. WHEELER, called on behalf of the defendants, testified as follows:

Examination by Mr. Dougherty.

I am the same A. E. Wheeler who testified on behalf of the Goernment yesterday. When I entered the premises located at 1516 South Fifth Street, in the City of Pekin, Illinois, on the 10th day of September, and immediately prior to that time, I did not know whether there was a stairway going from the first floor into the basement, and I did not know

whether any door was nailed between the first floor and the basement before I went on those premises.

The Government stipulates that neither Agent Wheeler, Agent Moore nor Agent Johnson knew that any stairway had been removed from the first floor to the basement of the premises at 1516 South Fifth Street, in the City of Pekin, and that neither of them knew that any door had been locked or closed or nailed causing a separation from the basement, of that premises, prior to the time that they entered the premises.

Defendants offer Transcript of Proceedings before the Commissioner, showing that on September 10th, 1929, Peter Rossi, Edward Ehrett and Nellie L. Faux were charged with a violation of Section 3 of Title 2 of the National Prohibition Act, and that they did unlawfully manufacture, possess and sell intoxicating liquor for beverage purposes and did maintain a common nuisance.

45 Defendants rest.

The Court find the defendants and each of them guilty.

Thereafter, on to-wit, November 28, A. D. 1930, there was filed with the Clerk of this Court by the defendants Rossi and Ehrett herein, their Motion for a New Trial, which said Motion is in the words and figures as follows, to-wit:

* * (Caption) * *

MOTION FOR NEW TRIAL.

Now comes the defendant, Peter Rossi, and the defendant Edward Ehrett, and each moves the Court to grant him a new trial herein for the following reasons:

1. There is no evidence in the case that either proves
46 or tends to prove that he committed any of the acts alleged or set forth in the indictment or any count thereof.

2. In arriving at a finding herein, the Court considered testimony and heard evidence obtained in violation of the defendats' rights uder the Constitution and Laws of the United States.

3. Because the indictment herein fails to charge a crime denounced by the laws of the United States.

4. Because the Court called the witness, Nellie Faux, as

a Court witness over the objection of these defendants, and in the absence of a proper showing by the United States Attorney.

Wherefore, these defendants pray that the Court set aside the verdict and grant a new trial.

PETER ROSSI
EDWARD EHRETT

By:
JOHN E. DOUGHERTY
Their Attorney.

But the Court, having duly considered said Motion for a New Trial, and being fully advised in the premises, denied the same.

(To which ruling of the Court, the Defendants by their counsel, then and there duly excepted.)

Thereafter, on to-wit, November 28, A. D. 1930, there was filed with the Clerk of this Court by the defendants Rossi and Ehrett herein, their Motion in Arrest of Judgment, which
47 said Motion is in the words and figures as follows, to-wit:

* * (Caption) * *

MOTION OF DEFENDANTS TO ARREST JUDGMENT.

The defendants, Peter Rossi and Edward Ehrett come now and move the Court to arrest judgment in this case and that they be discharged from the indictment for the following reasons:

1. It was error for the Court to overrule the Petition of the defendants filed herein to suppress evidence, and in permitting the Government to make proof of the evidence obtained by the illegal search and seizure.
2. The indictment and each count thereof fails to state any offense against the laws of the United States.
3. The indictment and each count thereof is drawn under statutes of the United States that had been and were repealed at the time of the Commission of the alleged offense, and
48 are directly in conflict with the National Prohibition Act, whereby they were not reenacted by the Act of Congress of November 23rd, 1921. Wherefore, the Court does not have jurisdiction of the subject matter.

Wherefore, the defendants and each of them respectfully pray that the judgment and sentence may be arrested in this case and that they go hence without day.

PETER ROSSI
EDWARD EHRETT

By:
JOHN E. DOUGHERTY,
Their Attorney.

But the Court, having heard the arguments of counsel and having duly considered said motion, and being fully advised in the premises, denied the same, and entered judgment upon the verdict.

(To which ruling of the Court and entry of Judgment, the defendants, and each of them, by their counsel, then and there duly excepted.)

49 And Now in furtherance of justice, and that right may be done, and forasmuch as the matters and things hereinbefore set forth do not otherwise appear of record, the defendants tender and present the foregoing as their Bill of Exceptions in this case to the action of the Court, and pray that the same may be settled, allowed and signed and sealed by the Court, and made a part of the record,

And the Same Is Accordingly Done this 12th day of June, A. D. 1931.

LOUIS FITZHENRY,
Judge.

O. K.
MARKS ALEXANDER,
Asst. U. S. Atty.

Filed June 12, 1931, S. T. Burnett, Clerk.

50 And afterwards, to wit: on the 19th day of December, A. D. 1930, there was filed in the office of the clerk of said court, in said cause, a certain notice of appeal, petition for appeal, and assignment of errors, all of which are in words and figures, following, to wit:

51 * * (Caption) * *

NOTICE OF APPEAL.

To the Honorable Walter M. Provine, United States District Attorney for the Southern District of Illinois:

Please take notice that the above named defendants, Peter Rossi and Edward Ehrett, have prayed an appeal from the United States District Court for the Southern District of Illinois, Northern Division, to the United States Circuit Court of Appeals for the Seventh Judicial Circuit.

Dated at Peoria, Illinois, in the Southern District of Illinois, this 19th day of December, A. D. 1930.

PETER ROSSI
EDWARD EHRETT

By
JOHN E. DOUGHERTY
Attorney for Defendants.

Received a true copy of the above notice this 19th day of December, A. D. 1930.

WALTER M. PROVINE
United States Attorney.
By MARKS ALEXANDER
Asst. U. S. Atty.

Endorsed: Filed Dec. 19, 1930 S. T. Burnett, Clerk.

52 * * (Caption) * *

PETITION FOR APPEAL.

To the Honorable Louis FitzHenry, Judge of the District Court of the United States for the Southern District of Illinois:

The above named Peter Rossi and Edward Ehrett each feeling himself aggrieved by the orders and decree of this Honorable Court, rendered and entered in the above entitled cause on the 18th day of December, A. D. 1930, does hereby ask the Honorable Court for an appeal to the Circuit Court of Appeals for the Seventh Judicial Circuit, for the reasons set forth in the Assignment of Errors filed herewith, and the

said defendants pray that their appeal be allowed and that citation be issued as provided by law, and that transcript of record, proceedings and documents upon which said orders, decrees and judgment was based duly authenticated, be sent to the United States Circuit Court of Appeals for the Seventh Judicial Circuit, at Chicago, Illinois, under the rules of such Court in such case made and provided, and that said appeal may be made a supersedeas, and that your petitioners be released on bail in amount to be fixed as this Court shall deem reasonable and just, pending the final disposition of this appeal.

PETER ROSSI
EDWARD EHRETT

53 By: JOHN E. DOUGHERTY
Attorney for Defendants.

Service of the within Petition for Appeal, together with Assignment of Errors and Notice of Appeal is hereby acknowledged and accept this 19th day of December, A. D. 1930.

WALTER M. PROVINE
United States Attorney.
By MARKS ALEXANDER
Asst. U. S. Atty.

54 * * (Caption) * *

ASSIGNMENT OF ERRORS.

Now come the defendants, Peter Rossi and Edward Ehrett, and file the following Assignment of Errors upon which they will rely upon their prosecution of the appeal in the above mentioned cause from the orders and judgment of this Honorable Court, entered on the 18th day of December, A. D. 1930.

1. The United States District Court for the Southern Distric of Illinois erred in overruling and denying the defendants Motion in Arrest of Judgment and entering judgment against them in this case.

2. The District Court erred in overruling and denying the Petition of the defendants to suppress evidence, and in permitting the Government to make proof of the illegal search and seizure.

3. The indictment and each count thereof fails to state
55 any offense against the laws of the United States.

4. The indictment and each count thereof fails to furnish the accused with such a description of the charges against them as will enable them to plead former jeopardy.

5. The indictment and each count thereof fails to set forth the alleged acts of the defendants with reasonable particularity of time, place and circumstance.

6. There is no such substance or thing known to the Internal Revenue Laws of the United States as moonshine whiskey and hootch.

7. There is no evidence in the Record to show that any offense was committed in the Eighth Internal Revenue Collection District of Illinois, or in the Thirteenth Prohibition District of the United States.

8. There is no evidence in the Record that shows to the Court that the alleged still was not registered with the Prohibition Administrator of the Thirteenth Prohibition District of the United States, or that a bond with at least two sureties had not been executed and approved by the Prohibition Administrator of the Thirteenth Prohibition District of the United States, in manner and form as provided by law.

9. There is no evidence in the Record that shows that these defendants were persons who were required to register the alleged still, or execute a bond herein.

10. The evidence wholly and entirely fails to show that these defendants or either of them is guilty in manner and form as charged in the indictment.

11. The indictment and each count thereof is drawn
56 under statutes of the United States that had been and were repealed at the time of the commission of the alleged offense, and were directly in conflict with the Act of Congress of October 28th, 1919, commonly known as the National Prohibition Act, whereby they were not reenacted by the Act of Congress of November 23rd, 1921, commonly known as the Willis-Campbell Act, and the Court therefore does not have jurisdiction of the subject matter herein.

PETER ROSSI
EDWARD EHRETT

By: JOHN E. DOUGHERTY
Attorney for Defendants.

Filed Dec. 19, 1930. S. T. Burnett, Clerk.

57 And afterwards, to wit: on the 23rd day of December, A. D. 1930, the following further proceedings were had in said court in said case and were entered of record to wit:

58 * * (Caption) * *

ORDER ALLOWING APPEAL AND SUPERSEDEAS AND FIXING AMOUNT OF SUPERSEDEAS BOND.

This cause again having come on to be heard upon the petition of the defendants, Peter Rossi and Edward Ehrett, for an appeal herein, and it appearing that assignment of errors have been duly made and filed as required by law, it is ordered that appeal be and the same is allowed to the end that the judgment of this Court heretofore entered herein may be reviewed in the United States Circuit Court of Appeals for the Seventh Judicial Circuit, and that the amount of bond to be given by the defendants on account thereof and as a supersedeas herein, shall be and is fixed in the sum of Five Thousand ($5000.00) Dollars each.

Dated at Peoria, Illinois, this 19th day of December, A. D. 1930.

LOUIS FITZHENRY,
Judge.

Endorsed:Filed Dec. 23, 1930. S. T. Burnett, Clerk.

23. 59 And afterwards, to wit: on the 23rd day of December, A. D. 1930, there was filed in the office of the clerk of said court, a certain bond on appeal by the defendant Peter Rossi, which said bond was and is in the words and figures, following, to wit:

60 * * (Caption) * *

BAIL BOND ON APPEAL.

Know All Men By These Presents:

That we, Peter Rossi as principal, and Elizabeth Wexler and Herman Pogioli, as sureties, are held and firmly bound unto the United States of America in the penal sum of Five Thousand ($5000.00) Dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors

and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 23rd day of December, in the year of our Lord One Thousand Nine Hundred and Thirty.

The condition of this obligation is such that whereas, on the 18th day of December, A. D. 1930, by the consideration of the District Court of the said United States, for the Southern District of Illinois, Northern Division, in a certain criminal cause, to-wit, a criminal indictment against the above named defendants, charging a violation of the Internal Revenue Laws of the United States of America, being Criminal Case No. 1272 in this Court, the said defendants, Peter Rossi and Edward Ehrett were adjudged and sentenced to pay a fine of Fifteen Hundred Dollars, and sentenced to Three years imprisonment in the United States Penitentiary at Leavenworth, Kansas; and whereas, upon petition of the said Peter Rossi and the said Edward Ehrett, the Honorable Louis FitzHenry, Judge of the District Court of the United States for the Southern District of Illinois, Northern Division, at Peoria, Illinois, within said District, has allowed an appeal from the aforesaid District Court to the United States Circuit Court of Appeals, for the Seventh Judicial Circuit,

61 from said judgment and sentence, and has made said appeal a supersedeas, and that the said Peter Rossi be admitted to bail in that behalf in the sum of Five Thousand ($5000) Dollars above mentioned.

Now, if the said Peter Rossi shall personally be and appear before the said United States Circuit Court of Appeals in and for the Seventh Judicial Circuit, on the first day of the next regular term thereof, and from day to day a thereafter during that and subsequent terms until the termination of said appeal, and shall not, at any of the terms of said Court depart that Court without leave thereof, and shall, in case the judgment and sentence aforesaid is affirmed, or in case his said appeal shall not be prosecuted with effect, surrender himself to the custody of the United States Marshal of the said United States of America in and for the Southern District of Illinois, then this obligation to be void, otherwise to remain in full force and virtue.

PETER ROSSI (Seal)
ELIZABETH WEXLER (Seal)
HERMAN POGIOLI (Seal)

Approved:
FITZHENRY,
Judge.

62 United States of America,
State of Illinois, } ss.
Peoria County.

ELIZABETH WEXLER, a surety on the annexed recognizance, being first duly sworn, deposes and says that she resides at 107 N. Park Place, in the City of Peoria, Illinois, in said District; that she is a free-holder in the County of Peoria, Illinois; and that she is worth the sum of Eleven Thousand Dollars, over and above all her just debts and liabilities in property subject to execution and sale, and that her property consists of real property as follows: West 16-2/3 feet of Lot 2 and East 16-2/3 feet of Lot 3 in Block 57 Monson & Sanfords Addition to Peoria, Illinois being a two story frame dwelling and East One Half of South One Half Lot 4 Block 57 Monson & Sanford's Addition to the City of Peoria Illinois being a two storey frame dwelling. No Encumbrances on either property.

ELIZABETH WEXLER.

Subscribed and sworn to before me this 20th day of December, A. D. 1930.

EVA LAMKIN,
(Seal) *Notary Public.*

63 United States of America,
State of Illinois, } ss.
Peoria County.

HERMAN POGIOLI, a surety on the annexed recognizance, being first duly sworn, deposes and says that he resides at 1529 Charlotte Street, in the City of Pekin, Illinois, in said District; that he is a free-holder in the County of Tazewell, Illinois; and that he is worth the sum of Fourteen Thousand Dollars, over and above all his just debts and liabilities in property subject to execution and sale, and that his property consists of real property as follows: One story brick & tile residence located on the East forty feet of Lot 8 Block 5 Millers Addition to the City of Pekin Illinois; and East 40 feet Block 2 and East 40 feet Lot 5 Block 2 and East 40 feet Lot 6 Block 2 and East 40 feet Lot 7 Block 2 and East forty feet Lot 4 Block 5 and East 40 feet Lot 5 Block 5 and East 40 feet Lot 6 Block 5 and East 40 feet Lot 7 Block 5 and East

40 feet Lot 9 Block 5 Millers Addition to Pekin, Illinois. Encumbrance of Four Hundred Dollars.

HERMAN POGIOLI.

Subscribed and sworn to before me this 20th day of December, A. D. 1930.

(Seal)

EVA LAMKIN,
Notary Public.

64 United States of America,
State of Illinois,
Peoria County. } ss.

....., a surety on the annexed recognizance, being first duly sworn, deposes and says that ..... resides at ..... Street, in the County of ..... Illinois, in said District; that ..... is a free-holder in the County of ..... Illinois; and that ..... is worth the sum of ..... Dollars, over and above all ..... just debts and liabilities in property subject to execution and sale, and that ..... property consists of real property as follows: .....

.....

Subscribed and sworn to before me this ..... day of December, A. D. 1930.

.....

Notary Public.

65 United States of America.
State of Illinois,
Peoria County. } ss.

....., a surety on the annexed recognizance, being first duly sworn, deposes and says that ..... resides at ....., in the County of ..... Illinois, in said District; that ..... is a free-holder in the County of ..... Illinois; and that ..... is worth the sum of ..... Dollars, over and above all ..... just debts and liabilities in property subject to execution and sale, and that ..... property consists of real property as follows: .....

.....

Subscribed and sworn to before me this ..... day of December, A. D. 1930.

.....

Notary Public.

Endorsed: Filed Dec 23, 1930 S. T. Burnett, Clerk.

66 And afterwards, to wit: on the 23rd day of December, A. D. 1930, there was filed in the office of the clerk of said court, in said cause, a certain bond of appeal by the defendant Edward Ehrett, which said Bond was and is in the words and figures following, to wit:

67 * * (Caption) * *

BAIL BOND ON APPEAL.

Know All Men By These Presents:

That we, Edward Ehrett as principal, and William Ehrett, Sr., as sureties, are held and firmly bound unto the United States of America in the penal sum of Five Thousand ($5000.00) Dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our teals and dated this 23rd day of December, in the year of our Lord One Thousand Nine Hundred and Thirty.

The condition of this obligation is such that whereas, on the 18th day of December, A. D. 1930, by the consideration of the District Court of the said United States, for the Southern District of Illinois, Northern Division, in a certain criminal cause, to-wit, a criminal indictment against the above named defendants, charging a violation of the Internal Revenue Laws of the United States of America, being Criminal Case No. 1272 in this Court, the said defendants, Peter Rossi and Edward Ehrett were adjudged and sentenced to pay a fine of Fifteen Hundred Dollars. and sentenced to Three years imprisonment in the United States Penitentiary at Leavenworth, Kansas; and whereas, upon petition of the said Edward Ehrett and the said Peter Rossi, the Honorable Louis FitzHenry, Judge of the District Court of the United States for the Southern District of Illinois, Northern Division, at Peoria, Illinois, within said District, has allowed an

appeal from the aforesaid District Court to the United States Circuit Court of Appeals, for the Seventh Judicial Circuit, from said judgment and sentence, and has made said appeal a supersedeas, and that the said Edward Ehrett be ad-
68 mitted to bail in that behalf in the sum of Five Thousand ($5000) Dollars above mentioned.

Now, if the said Edward Ehrett shall personally be and appear before the said United States Circuit Court of Appeals in and for the Seventh Judicial Circuit, on the first day of the next regular term thereof, and from day to day thereafter during that and subsequent terms until the termination of said appeal, and shall not, at any of the terms of said Court depart that Court without leave thereof, and shall, in case the judgment and sentence aforesaid is affirmed, or in case his said appeal shall not be prosecuted with effect, surrender himself to the custody of the United States Marshal of the said United States of America in and for the Southern District of Illinois, then this obligation to be void, otherwise to remain in full force and virtue.

EDWARD EHRETT (Seal)
WILLIAM EHRETT, SR. (Seal)

Approved:
FITZHENRY,
Judge.

69 United States of America,
State of Illinois,
Peoria County. } ss.

WILLIAM EHRETT, SR., a surety on the annexed recognizance, being first duly sworn, deposes and says that he resides at 221 Ann Street, in the Village of East Peoria, Illinois, in said District; that he is a free-holder in the County of Tazewell, Illinois; and that he is worth the sum of Forty Four Thousand Dollars, over and above all his just debts and liabilities in property subject to execution and sale, and that his property consists of real property as follows: South ½ of North East Quarter Section Twelve Twp 25 North Range 5 West 3rd P. M. being 72 acres of building lots worth forty thousand dollars and South ½ North West Quarter Fractional Section 12 Twp 25 North Range 5 West Third PM being 27 acres of land worth $4200.00 No Encumbrances.

WILLIAM EHRETT, SR.

Subscribed and sworn to before me this 20th day of December, A. D. 1930.

EVA LAMKIN,

(Seal) *Notary Public.*

70 United States of America
State of Illinois,
Peoria County. } ss.

....., a surety on the annexed recognizance, being first duly sworn, deposes and says that ..... resides at .....Street, in the County of ....., Illinois, in said District; that ..... is a free-holder in the County of ..... Illinois; and that ..... is worth the sum of ..... Dollars, over and above all ..... just debts and liabilities in property subject to execution and sale, and that ..... property consists of real property as follows: .....

.....

Subscribed and sworn to before me this ..... day of December, A. D. 1930.

.....

Notary Public.

71 United States of America,
State of Illinois,
Peoria County. } ss.

....., a surety on the annexed recognizance, being first duly sworn, deposes and says that ..... resides at ..... Street, in the County of ....., Illinois, in said District; that ..... is a free-holder in the County of..... Illinois; and that ..... is worth the sum of..... Dollars, over and above all ..... just debts and liabilities in property subject to execution and sale, and that ..... property consists of real property as follows: .....

.....

Subscribed and sworn to before me this ..... day of December, A. D. 1930.

.....

Notary Public.

72 United States of America,
State of Illinois,
Peoria County. } ss.

....., a surety on the annexed recognizance, being first duly sworn, deposes and says that ..... resides at ..... Street, in the County of ....., Illinois, in said District; that ..... is a free-holder in the County of ..... Illinois; and that ..... is worth the sum of ..... Dollars, over and above all ..... just debts and liabilities in property subject to execution and sale, and that ..... property consists of real property as follows: .....

.....

Subscribed and sworn to before me this ..... day of December, A. D. 1930.

.....

Notary Public.

Endorsed: Filed Dec. 23, 1930, S. T. Burnett, Clerk.

73 And afterwards, to wit: on the 20th day of January, A. D. 1931, the following further proceedings were had in said court in said case and were entered of record, to wit:

* * (Caption) * *

Come now the defendant herein by John E. Dougherty, Esq., their attorney and for good cause shown, it is ordered by the court that the time for preparing and filing bill of exceptions herein and for preparing and filing transcript of record and for docketing said case in the United States Circuit Court of Appeals for the Seventh Circuit be, and is hereby extended for a period of thirty days from and after January 22nd, A. D. 1931, to and including February 21st, A. D. 1931.

Enter:

(Signed) FITZHENRY,
U. S. District Judge.

Endorsed: Filed January 30, 1931, S. T. Burnett, Clerk.

74 And afterwards, to wit: on the 19th day of February, A. D. 1931, the following further proceedings were had in said court in said case and were entered of record to wit:

* * (Caption) * *

Now again come the defendants herein, by John E. Dougherty, their attorney, and for good cause shown, it is ordered by the Court that the time for preparing and filing the bill of exceptions herein, and for preparing and filing transcript of record and for docketing said cause in the United States Circuit Court of Appeals for the Seventh Circuit, be, and is hereby extended for a period of thirty days from and after February 21st, 1931 to and including March 23rd, 1931.

Done at Peoria, Illinois this 19th day of February, 1931.

LOUIS FITZHENRY,
United States District Judge.

Endorsed: Filed Feb. 19, 1931, S. T. Burnett, Clerk.

75 And afterwards, to wit: on the 19th day of March, A. D. 1931, the following further proceedings were had in said court in said case and were entered of record, to wit:

* * (Caption) * *

And now again come the defendants herein, by John E. Dougherty, their attorney, and for good cause shown, it is ordered by the Court that the time for preparing and filing the Bill of Exceptions herein, and for preparing and filing transcript of record and for docketing said cause in the United States Circuit Court of Appeals for the Seventh Circuit, by, and is hereby extended for a period of thirty days from and after March 23, 1931, to and including April 22, 1931.

FITZHENRY,
Judge.

Endorsed: Filed Mar 19, 1931, S. T. Burnett, Clerk.

76 And afterwards, to wit: on the 21st day of April, A. D. 1931 the following further proceedings were had in said court in said case and were entered of record, to wit: Ent 21

* * (Caption) * *

ORDER.

Now again come the defendants herein, by John E. Dougherty, their attorney, and for good cause shown, it is ordered by the Court that the time for preparing and filing the bill of exceptions herein, and for preparing and filing transcript of record and for docketing said cause in the United States Circuit Court of Appeals for the Seventh Circuit, be, and is, hereby extended for a period of thirty days from and after April 22nd, 1931, to and including May 22nd, 1931.

Done at Peoria, Illinois, this 21st day of April, 1931.

LOUIS FITZHENRY,
United States District Judge.

Endorsed: Filed Apr. 21, 1931.

S. T. BURNETT,
Clerk.

77 (Endorsed) No. 1272 United States District Court Southern District of Illinois Northern Division United States of America, Plaintiff, vs. Peter Rossi, Edward Ehrett, Defendants. Order John E. Doughterty 332 Peoria Life Building Peoria, Illinois Attorney for Defendants.

78 And afterwards, to wit: on the 21st day of May, A. D. 1931, the following further proceedings were had in said court in said case and were entered of record, to wit: Entere 21, 1

* * (Caption) * *

ORDER.

Now again come the defendants herein, by John E. Dougherty, their attorney, and for good cause shown, it is ordered by the Court that the time for preparing and filing the bill of exceptions herein, and for preparing and filing transcript of record and for docketing said cause in the United States

Circuit Court of Appeals for the Seventh Circuit, be and is, hereby extended for a period of thirty days from and after May 22nd, 1931, to and including June 21st, 1931.

Done at Peoria, Illinois, this 21st day of May, 1931.

LOUIS FITZHENRY,
United States District Judge.

Ok

MARKS ALEXANDER,
Asst. U. S. Atty.

Endorsed: Filed May 21, 1931, S. T. Burnett.

79 And afterwards, to wit: on the 20th day of June, A. D. 1931, the following further proceedings were had in said court in said case and were entered of record, to wit:

* * (Caption) * *

ORDER.

Now again come the defendants herein, by John E. Dougherty, their attorney, and for good cause shown, it is ordered by the court that the time for preparing and filing transcript of record on appeal and docketing said cause in the United States Circuit Court of Appeals for the Seventh Circuit, be, and is hereby extended for a period of twenty days from and after June 21, 1931, to and including July 11, 1931.

Done at Peoria, Illinois, this 20th day of June, A. D. 1931.

Enter:

(Signed) LOUIS FITZHENRY,
U. S. District Judge.

OK

MARKS ALEXANDER,
Asst. U. S. Attorney.

Indorsed, filed June 20, 1931, S. T. Burnett, Clerk.

80 And afterwards, to wit: on the 19th day of January, A. D. 1931, there was filed in the office of the clerk of the said court, a certain Praecipe for Record, which said Praecipe was and is in the words and figures, following, to wit:

81 • • (Caption) • • Filed 19

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of said Court:

Please prepare Transcript of Record on appeal to the Circuit Court of Appeals for the Seventh Judicial Circuit in behalf of Peter Rossi and Edward Ehrett, the same to consist of the following:

1. Placita and Captions.
2. Indictment.
3. Petitions to Suppress Evidence and ruling of the Court thereon.
4. Plea of not guilty, trial, finding, verdict, Motion for New trial, Motion in Arrest of Judgment, judgment and sentence of the Court, and any and all orders of the Court in relation thereto.
5. Bill of Exceptions.

82 6. Petition for Appeal.
7. Assignment of Errors.
8. Order Allowing Appeal and Supersedeas.
9. Appeal and Clerk's Return.
10. Citation and Acceptance of Service.
11. Praecipe for Transcript of Record
12. Supersedeas Bond.
13. Clerk's Return.

PETER ROSSI,
EDWARD EHRETT.

By:
JOHN E. DOUGHERTY,
Their Attorney.

Endorsed: Filed Jan 19 1931 S. T. Burnett, Clerk

85 United States of America
Southern District of Illinois } ss:
Northern Division

I, S. T. Burnett, Clerk of the District Court of the United States for the Southern District of Illinois and keeper of the records and seals thereof, od hereby certify the foregoing to be a true copy and complete transcript of the proceedings had

of record and on file in the case entitled The United States vs. Peter Rossi, alias Peter Russo and Edward Ehrett, No. 1272, made in accordance with praecipe for record filed herein, as fully as the same appear from the original files and record in said cause now in my office remaining.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Peoria, in said District, this 22nd day of June, A. D. 1931.

(Seal) S. T. BURNETT, *Clerk*

83 * * (Caption) * *

CITATION AND ACCEPTANCE OF SERVICE.

To the United States of America—Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Seventh Judicial Circuit, at Chicago, Illinois, thirty days from and after the day this citation bears date, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Southern District of Illinois, Northern District wherein Peter Rossi and Edward Ehrett are the Appellants and you are the Appellee, to show cause, if any there be, why the judgment rendered against the said Appellants, as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Judge of the District Court of
84 the United States for the Southern District of Illinois, Northern Division, this 23rd day of December, A. D. 1930.

LOUIS FITZHENRY,
United States District Judge,
Southern District of Illinois.

Service accepted this 23rd day of December A. D. 1930.

UNITED STATES OF AMERICA,
Appellee.
By WALTER M. PROVINE,
United States Attorney.
By ROBERT A. STEPHENS, JR.,
Assistant United States Attorney.

Filed Dec. 23, 1930, S. T. Burnett, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby cerify that the foregoing printed pages, numbered from 1 to 48, inclusive, contain a true copy of the Printed Record, printed under my supervision and filed on the twenty-eight day of July, 1931, on which the following entitled cause was heard and determined: Peter Rossi and Edward Ehrett, Appellants, vs. The United States of America, Appellee, No. 4594, October Term, 1931, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this twenty-second day of December, A. D. 1932.

(Seal)

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.

At the regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States Court Room in the City of Chicago, in said Seventh Circuit on the seventh day of October, 1930, of the October Term, in the year of our Lord One Thousand Nine Hundred and Thirty, and of our Independence the One Hundred and Fifty-Fifth.

And afterwards, to-wit: On the sixteenth day of July, 1931, there was filed in the Office of the Clerk of this Court, an Apeparance of Counsel for Appellee, which said Appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 4594 October Term, 1930

PETER ROSSI AND EDWARD EHRETT
vs.
THE UNITED STATES OF AMERICA

The Clerk will enter my appearance as counsel for appellee.

FRANK K. LEMON,
U. S. Attorney, Springfield, Illinois.

Endorsed: Filed, July 16, 1931. Edward M. Holloway, Clerk.

At the regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States Court Room in the City of Chicago, in the said Seventh Circuit, on the sixth day of October, 1931, of the October Term, in the year of our Lord One Thousand Nine Hundred and Thirty-One, and of our Independence the One Hundred and Fifty-Sixth.

And afterwards, to-wit: On the twelfth day of April, 1932, the following further proceedings were had and entered of record, to-wit: Tuesday, April 12, 1932.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding
Hon. Evan A. Evans, Circuit Judge
Hon. William M. Sparks, Circuit Judge
Frederick G. Campbell, Clerk
Henry C. W. Laubenheimer, Marshal

PETER ROSSI AND EDWARD EHRETT
No. 4594 vs.
THE UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the Southern District of Illinois, Northern Division.

It is ordered by the Court that this cause be, and the same is hereby set down for hearing on April 26, 1932.

And afterwards, to-wit: On the twenty-sixth day of April, 1932, the following further proceedings were had and entered of record, to-wit:

Tuesday, April 26, 1932.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding
Hon. Evan A. Evans, Circuit Judge
Hon. William M. Sparks, Circuit Judge
Hon. James H. Wilkerson, District Judge
Frederick G. Campbell, Clerk
Henry C. W. Laubenheimer, Marshal

Before:

Hon. Samuel Alschuler, Circuit Judge
Hon. Evan A. Evans, Circuit Judge
Hon. James H. Wilkerson, District Judge

PETER ROSSI AND EDWARD EHRETT 4594 vs. THE UNITED STATES OF AMERICA	Appeal from the District Court of the United States for the Southern District of Illinois, Northern Division.

Now comes this day the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. John E. Dougherty, counsel for appellant, and Mr. Frank K. Lemon, counsel for Appellee, and the Court having heard the same takes this matter under advisement.

And afterwards, to-wit: On the thirtieth day of June, 1932, there was filed in the Office of the Clerk of this Court, the Opinion of the Court, which said Opinion is in the words and figures following, to-wit:

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 4594 October Term, April Session, 1932

PETER ROSSI AND EDWARD EHRETT Appellants vs. THE UNITED STATES OF AMERICA Appellee.	Appeal from the District Court of the United States for the Southern District of Illinois, Northern Division.

June 30, 1932

Before Alschuler and Evans, Circuit Judges, and Wilkerson, District Judge.

Wilkerson, District Judge: The first two counts on which defendants were convicted charge violations of Section 306 of

Title 26, U. S. C. A. (R. S. 3281) by carrying on the business of a distiller with intent to defraud the United States of special tax on spirituous liquor. The third count charges a violation of Section 284 of Title 26, U. S. C. A. (R. S. 3260) by carrying on the business of a distiller without having given bond as required by law. The fourth count charges a violation of Section 281 of Title 26, U. S. C. A. (R. S. 3258) by having possession of distilling apparatus which had not been registered as required by law.

1. Appellants assert that the statutes upon which the indictment is based have been repealed. In United States v. Yuginovich, 256 U. S. 350, it was held that the National Prohibition Act repealed the sections of the internal revenue laws here involved. By this Willis-Campbell Act of November 23, 1921, c. 134, Sec. 5, 32 Stat. 223 (27 U. S. C. A., Sec. 3), it was provided:

> "All laws in regard to the manufacture and taxation of and traffic in intoxicating liquor, and all penalties for violations of such laws that were in force on October 28, 1919, shall be and continue in force as to both beverage and non-beverage liquor, except such provisions of such laws as are directly in conflict with any provision of this title."

We think that the effect of the Willis-Campbell Act was to re-enact the provisions of the internal revenue laws relied upon by the Government in this case. Difficulties or even impossibilities in complying with the provisions of the revenue laws, thus re-enacted, do not establish that the intention of Congress was not to continue those provisions in force. There is no direct conflict between the prohibitory legislation and the provisions of the revenue laws here involved. (United States v. One Ford Coupe, 272 U. S. 321, 327; United States v. Stafoff, 260 U. S. 477; United States v. Sullivan, 274 U. S. 259; Murphy v. United States, 38 Fed. (2d) 441.)

2. It is urged as ground for reversal that the evidence which is relied upon to sustain the conviction should have been suppressed. The officers entered without a warrant and searched

the premises. Appellants invoke the statute as to the search of a private dwelling. The basement in which the still was found had been separated from the residence portion of the building on the floors above by nailing and padlocking the door at the head of the steps leading from the basement. The Court was warranted, in view of all the circumstances, in rejecting the claim that defendants were on the premises as guests engaged in repairing some radio apparatus. Defendants disclaimed any interest in any portion of the premises searched, and are not in position to assert a violation of their constitutional rights. And there is evidence to sustain the finding that defendants, in apparent charge of the premises, authorized the search and seizure without a warrant. (Milvonico v. United States, 53 Fed. 2d) 937.)

3. Error is assigned because of the failure of the prosecution to show that Pekin, Illinois, is in the collection district and prohibition district charged in the indictment. The Court takes judicial notice of this fact. (Hoyt v. Russell, 117 U. S. 401; United States v. Jackson, 104 U. S. 41; Caha v. United States, 152 U. S. 211.)

4. Error is assigned because of the absence of direct evidence in the record to show that the still was not registered or the bond approved as required by law. There are many circumstances shown in the record from which, unexplained, the Court was warranted in finding that there was no registration or bond. The fact of registration and giving bond was peculiarly within the knowledge of the defendants. In view of their conduct at the time of the search and their failure to make any explanation, the conclusion that they had failed to comply with the statute seems to be a logical one. (Cardenti, et al. v. United States, 24 Fed (2d) 782; McCurry, et al. v. United States, 221 Fed. 532; Barton, et al. v. United States, 267 Fed. 174.)

5. Other errors as to the sufficiency of the proof have been assigned, but we think that they are without merit and do not require further discussion.

The judgment is AFFIRMED.

And on the same day, to-wit: On the thirtieth day of June, 1932, the following further proceedings were had and entered of record, to-wit:

Thursday, June 30, 1932.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding
Hon. Evan A. Evans, Circuit Judge
Hon. William A. Sparks, Circuit Judge
Frederick G. Campbell, Clerk
Henry C. W. Laubenheimer, Marshal

Before:

Hon. Samuel Alschuler, Circuit Judge
Hon. Evan A. Evans, Circuit Judge
Hon. James H. Wilkerson, District Judge

PETER ROSSI AND EDWARD EHRETT
No. 4594 vs.
THE UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the Southern District of Illinois, Northern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Illinois, Northern Division, and was argued by counsel.

On consideration whereof: It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby affirmed.

And afterwards, to-wit: On the nineteenth day of July, 1932, there was filed in the Office of the Clerk of this Court, a Petition for a Rehearing, which said Petition for a Rehearing is not copied here.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States Court Room in the City of Chicago, in said Seventh Circuit on the fourth day of October, 1932, of the October Term, in the year of our Lord One Thousand Nine Hundred and Thirty-two, and of our Independence the One Hundred and Fifty-Seventh.

And afterwards, to-wit: On the seventh day of October, 1932, the following further proceedings were had and entered of Record, to-wit:

Friday, October 7, 1932.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding
Hon. Evan A. Evans, Circuit Judge
Hon. William A. Sparks, Circuit Judge
Frederick G. Campbell, Clerk
Henry C. W. Laubenheimer, Marshal

Before:

Hon. Samuel Alschuler, Circuit Judge
Hon. Evan A. Evans, Circuit Judge
Hon. James H. Wilkerson, District Judge

PETER ROSSI AND EDWARD EHRETT
No. 4594 vs.
THE UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the Southern District of Illinois, Northern Division

It is ordered by the Court that the petition for a rehearing in this cause be, and the same is hereby denied.

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten and printed pages, numbered from 1 to 7, inclusive, contain a true copy of the proceedings had and papers filed (excepting the briefs of counsel and motions, stipulations and orders relating to the filing of briefs, and the Petition for Rehearing) in the case of Peter Rossi and Edward Ehrett v. The United States of America, No. 4594, October Term, 1931, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this twenty-second day of December, A. D. 1932.

(Seal)

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 6, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted, limited to the question of the sufficiency of the evidence to support conviction upon the third and fourth counts. The case is advanced and assigned for argument on Monday, March 13th next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.